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# Understanding Chemical Patents

A Guide for the Inventor  
Second Edition

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## Interference

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to the proposed counts and the rights of each other to make the claims; and a testimony period, in which witnesses may be examined and cross-examined on details of the evidence relating to their knowledge and actions. The junior party takes testimony first, and the senior party has the choice of relying on his or her filing date without taking testimony if that appears to be advantageous. The chemist is involved in this process in two ways: (1) to produce the written records of experiments, and (2) to give oral testimony if needed.

## Records

Notebook records are vitally important in an interference proceeding. Every working chemist writes hundreds or thousands of pages of notebook records, and obviously the vast majority of these will never be needed in a patent case. It is easy to slip into careless habits in keeping notebooks, but on the rare occasions when the notebook must be produced, it is absolutely necessary that it be a record that is sufficiently complete that another chemist can understand and reproduce the work and that there is a witness who can give corroborating testimony if needed.

These are the important points of a good record:

1. It should be in a bound notebook. Loose records are easily challenged and hard to support because the dating cannot be tied to other contemporary records.
2. Experiments should be recorded in chronological order. Skipped or blank pages or pages dated out of order create a suspicion of tampering with the record.
3. Each experiment should be dated when it is started, and if the work carries over more than 1 day, each day's entry should be dated.
4. The experiment should start with a clear statement of the objective.
5. All essential facts should be recorded, such as equipment used, conditions, times, materials used including source and quality, yields, characterizing data, and so on. Abbreviations and codes should be chosen and used in an unambiguous way.
6. The record of an experiment that takes more than one page should make definite references to previous and following pages so it can be followed, for example, "continued on p.—", "continued from p.—".
7. If a standard or routine procedure is being followed, a reference to the location of a full description should be made.



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## UNDERSTANDING CHEMICAL PATENTS

8. The record should draw a conclusion if possible. A conclusion may not be needed if the experiment is one of a routine series, but experiments that explore new conditions or are aimed at making a new composition should conclude with an evaluation of the results. This step is important because recognition of success is an important element in the reduction to practice of an invention. Unnecessary derogatory comments about the results should not be made—the results may be valuable in a different way from what was anticipated when the experiment was started.
9. Analytical or other test results should be attached or copied into the record, or if they are too bulky, reference should be made to where they can be found.
10. Any unused portion of a page should be struck out to forestall any challenge that the record has been augmented at a later date.
11. Entries should be in permanent ink.

When the record is complete, or when there will be some delay before the work will proceed, the notebook page should be signed and witnessed promptly. These signatures must be dated. The purpose of witnessing is to provide corroboration of the existence of the record at the date of signing by a person who can testify later if needed. The reason is that an inventor's unsupported testimony on his or her own behalf is considered under the law to be self-serving. Many interferences have been lost because no corroboration was available for the inventor's testimony. Witnessing should be done no more than a few days after entries are made. Witnessing that is unduly delayed is little better than no witnessing at all. Preferably the witness should be someone who has observed and understood the experiments—the laboratory technician may be a good witness—but in any event the witness should have read and understood the entries and should be a person who can reasonably be expected to be available for several years after the date of signing. The witness should not be a potential co-inventor for the reason already mentioned.

Consistency in the keeping of laboratory notebooks is extremely important. Occasionally in patent litigation a judge will accept the accuracy of notebook records despite a lack of proper witnessing if they have been kept chronologically, in a bound notebook, and according to a well-established pattern. However, a properly witnessed record is much safer.

### *Testimony in Interference Proceedings*

An important interference proceeding will eventually reach the period for the taking of testimony. In the usual procedure the attorneys for both

### *8. Interferences and th*

parties meet in an attorney or an officer qualified to take court clerk. A public stenographer made of the testimony, as one at a time, and are questioned by the party who calls them. The testimony is given by the opposing party. The transcript is submitted to the Board of Trademark Office (PTO) as evidence. The decision as to which party wins the decision is that each party is responsible for the interferences of the inventor.

Witnesses who may be called to witness the notebook record of the invention was made, other than by repeating the experimental data or test results for the purpose of attempts to obfuscate the facts and will throw doubt on the questions directly, with no attorneys will usually meet what to expect. Tactics in interferences although they will appear about the opposition's intentions on how to approach opposition procedures that goes with the testimony experience for technical persons sworn statements of the witnesses or affidavits are sworn.

### *Discovery*

Another aspect of interferences touch the activities of the "discovery". A party to an interference records that might help the requiring production of a transcript of the interference, which would be evidence, and reports. The testimony is given in mind when recording the